In the High Court of Judicature at Madras

Dated: 06.08.2007

Coram

The Honourable Mr.Justice D.MURUGESAN
and
The Honourable Mr.Justice P.P.S. JANARTHANA RAJA

T.C. (A) Nos.552 to 555, 557, 560, 569 and 784 to 786 of 2007

T.C.(A) No.552 of 2007
M/s. Kasi Consultant Corporation
91-92, Jawaharlal Nehru Salai
Chennai 600 083. Appellant

v

The Deputy Commissioner of
Income Tax Circle II
Chennai 600 034 Respondent

T.C.(A) No.553 of2007
M/s. Kasi Investment & Consultant
Corporation
91-92, Jawaharlal Nehru Salai
Chennai 600 083. Petitioner

v

The Deputy Commissioner of
Income Tax Circle II
Chennai 600 034 Respondent

T.C.(A) No.554 of 2007
M/s. Kasi Consolidated &
Finance Corporation
91-92, Jawaharlal Nehru Salai
Chennai 600 083. Petitioner

v

The Deputy Commissioner of
Income Tax Circle II
Chennai 600 034 Respondent

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

T.C.(A) No.555 of 2007
M/s. Kasi Consultant & Investment
Corporation
91-92, Jawaharlal Nehru Salai
Chennai 600 083. Petitioner

v

The Deputy Commissioner of
Income Tax Circle II
Chennai 600 034 Respondent

T.C.(A) No.557 of 2007
M/s. Kasi Finance and Investment
Corporation
91-92, Jawaharlal Nehru Salai
Chennai 600 083 Petitioner

v

The Deputy Commissioner of
Income Tax Circle II (Inv)
Chennai 600 034 Respondent

T.C.(A) No.560 of 2007
M/s. Kasi Credit Consultant
Corporation
91-92, Jawaharlal Nehru Salai
Chennai 600 083 Petitioner

v

The Deputy Commissioner of
Income Tax Circle II (Inv)
Chennai 600 034 Respondent

T.C.(A) No.569 of 2007
M/s. Kasi Finance and Business
Corporation
91-92, Jawaharlal Nehru Salai
Chennai 600 083 Petitioner

v

The Deputy Commissioner of
Income Tax Circle II (Inv)
Chennai 600 034 Respondent

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

T.C.(A) No.784 of 2007
M/s. Kasi Credit Corporation
91-92, Jawaharlal Nehru Salai
Chennai 600 083 Petitioner

v

The Deputy Commissioner of
Income Tax Circle II (Inv)
Chennai 600 034 Respondent

T.C.(A) No.785 of 2007
M/s. Kasi Investment & Finance
Corporation
91-92, Jawaharlal Nehru Salai
Chennai 600 083 Petitioner

v

The Deputy Commissioner of
Income Tax Circle II (Inv)
Chennai 600 034 Respondent

T.C.(A) No.786 of 2007
M/s. Kasi Consultant & Credit
Corporation
91-92, Jawaharlal Nehru Salai
Chennai 600 083 Petitioner

v

The Deputy Commissioner of
Income Tax Circle II (Inv)
Chennai 600 034 Respondent

Tax Case appeals filed under Section 260-A of the Income Tax Act 1961 as against order dated 20.01.2006 in ITA No.99/MDS/2001, 100/MDS/2001, 101/MDS/2001,102,94,93,95,96,97,98/MDS/2001.

On the file of the Income Tax Appellate Tribunal Chennai'A'Bench as against the order dt.04.09.2000 in I.T.Appeal No.150x151/2000/JCIT/R-111,152,153,154-99/2000,146,147 to 149,163 to 165,161,162,157 & 158,159 & 160,155 & 156/99-2000/5C IT/RIII.

On the file of the Commissioner of Income Tax (Appeals) -VI Chennai as against the order dt.30.6.99 in G.I.No.10306-K,10307-K,10304-K,10305-K,10314-K,10311-K,10313-K,10309-K,10310-K,10308-K.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

On the file of the Joint Commissioner of Income Tax Range III, Chennai-34. challenging the action of the Income Tax Appellate Tribunal in confirming the order of imposing penalty under Section 271D of the Act.

For appellant : Mr.J.Balachander
For respondent : Mr.T.Ravikumar Jr.S.C.

J U D G M E N T

(Judgment of Court delivered by D.MURUGESAN.,J.)

All these appeals are admitted on the following substantial questions of law:

" i) Whether the Tribunal is correct in confirming the order imposing penalty under Section 271D o the Act on the facts and in the circumstances of the case?
ii) Whether the Tribunal is correct in concluding that there was reasonable cause for accepting deposits in cash exceeding Rs.20,000/- with reference to the provisions of Section 273B of the Act?
iii) Whether the Tribunal is correct in not considering the scope and the purpose of the provisions of Section 271D of the Act, especially with reference to Sections 269SS and 273B of the Act? and
iv) Whether the Tribunal is correct in rejecting the ground relating to the violation of the principles of natural justice on the facts and in the circumstances of the case?"

2. For the disposal of the appeals, the facts relating to Tax Case (Appeal) No.552 of 2007 is referred.

3. The appellant-firm is one of the firms floated by one Mathivathanan and his wife Smt. Annakalanjiyam from the year 1994 onwards. They and certain other relatives and friends are partners in all the firms. The firm had accepted deposits from the public for the purpose of business in real estate and property development carried on by related concerns viz., Kasi Housing and Development, Kasi Builders and Mr.Mathivathanan. The total deposits accepted by the firm from 1995-96 to 1997-98, amounted to 6.54 crores. Pursuant to the returns filed , the assessment order under Section 143 (3) r/w Sections 158BC of the Income Tax Act (hereinafter referred to as 'the Act'),for the block period was

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

passed on 29th December, 1998. It was noticed that there was a contravention of the provisions of Section 269T of the Act by the firm in accepting the deposits from the public and therefore, penalty proceedings were initiated under Section 271D of the Act.

4. Before the Assessment Officer, the appellant firms had conducted

1) The acceptance and payments of few deposits in cash above Rs.20000/- was done purely due to business exigencies.

2) The acceptance of few deposits in cash was due to ignorance of law and the partners were not aware of the implications of Sec.269SS of the I.T.Act.

3) The deposits were accepted from people of various walks of life and some of them even do not have a bank account. Of DD/Cheque was insisted upon, then they would have chosen would choose to approach some other finance company.

4) The customers come after the close of banking hours.

5) The entire deposits were received form outside source and no deposits were made by the partners.

6) The quantum of non-compliance is not very substantial comparing with the total deposits accepted.

7) The acceptance of deposits is for business purpose of the group concerns, which require heavy cash for paying advances/consideration for land purchases.

8) The deposits have been treated as genuine in the assessment. This is argued that as provisions of Sec. 269SS were brought into the statute only to curb the creation of bogus credits and , penalty may not be levied."

5. All the contentions of the appellant/assessee were negatived by the Assessing Officer and ultimately penalty was levied under Section 271D of the Act on the deposit taken in cash during different assessment years, namely, Rs.1,30,000/- for the assessment year 1996-97 and Rs.1,70,000/- for the assessment year 1997-98.

6. Similar contentions were raised in respect of other Tax Case (Appeals) and all the contentions were rejected and similar orders levying penalty was issued by the Assessing Officer and hence, we did not elaborate for the purpose of individual cases.

7. The order of the Assessing Officer was questioned before the Commissioner of Income Tax (Appeals) VI, Chennai on the same grounds raised before the Assessing Officer. By Order dated 04.09.2000, the Commissioner of Income Tax Appeals, while allowing the appeal, held that the penalty under Section 271D was not leviable after coming to the conclusion that for accepting the deposits, the firm has explained reasonable cause as to the business exigencies.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

8. On further appeals to the Income Tax Appellate Tribunal at the instance of the Revenue, the Appellate Tribunal has negatived the assessee's contention and accordingly, allowed all the appeals. Hence the present Tax Appeals at the instance of the assessees.

9. We have heard learned counsel for the appellants and as well as the learned Standing Counsel appearing for the Income Tax Department.

10. Learned counsel for the appellants has once again reiterated all the contentions raised before the Assessing Officer and further submitted that in view of the findings of the Income Tax Appellate Tribunal for rejecting the claim on the ground that there is no material placed by the assessee to sustain the claim that the depositors have no bank account in Chennai, to accept the deposit in cash, and the shortage of cash in the business which led the assessees to accept the deposits in cash, which was not demonstrated and the assessees have not shown that there was cash deficiency to meet their day- today requirement in business. Hence, learned counsel for the appellants submitted that the assessee/appellants may be permitted to adduce certain materials before the Assessing Officer and for the said purpose, the matter could be remitted to the Assessing Officer.

11. Section 269SS of the Act contemplates that no person shall, after 30th day of June, 1984 take or accept from any other person any loan or deposit, otherwise than by an Account Payee Cheque or Account Payee Bank Draft if, the amount of such loan or deposit or the aggregate amount of such loan and deposit. In case any deposit is accepted contrary to the above provisions in terms of Section271D, such person shall be liable to pay by way of penalty a sum equal to the amount of the loan or deposit so taken or accepted. There cannot be any dispute as to the proposition made for violation of the provisions under Section 269SS of the Act,and a penalty could be levied under Section 271D of the Act.

12. However, there is one exemption to the above provisions under Section 273 of the Act and no penalty shall be imposable on the person or assessee, as the case may be, for any failure referred to in the said provisions, if he proves that there was reasonable cause for the said failure.

13. Though the appellants- assessees claimed that the firms had taken deposit from the public only for the purpose of business of real estate and property development carried on by the related concerns, and there was reasonable cause and therefore, the penalty would not have been imposed in view of the provisions of Section 273B of the Act, the same was rejected by the Assessing Officer. However, the Commissioner of Income Tax (Appeals) found that penalty under Section 271 was not automatic and on the facts and circumstances of the case, it should be analysed to ascertain as to the business exigencies. Again the judgment of the Commissioner of Income Tax (Appeals) was negatived by the Special

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Tribunal.

14. Though the provisions of Section 269SS contemplates that no person shall, after 30th day of June, 1984 take or accept from any other person any loan or deposit otherwise than by an Account Payee Cheque or Account Payee Bank Draft if, the amount of such loan or deposit or the aggregate amount of such loan and deposit. In case any deposit is accepted contrary to the above provisions in terms of Section 271D, such person shall be liable to pay by way of penalty sum equal to the amount of the loan or deposit so taken or accepted. Ultimately the question pointed is as to whether the assessees have produced materials to show the reasonable cause for accepting the deposit in cash.

15. The Apex Court in more than one case, repeatedly held that the High Court, while considering under Section 261, shall not embark upon to re-appreciate the evidence or go into the veracity of the evidence as such. There are restrictions for interference of the orders of the Taxation Appellate Tribunal only when the findings are perverse and without support of any evidence at all. Even the Apex Court has gone to the extent of lying down that the alleged deficiency of cash cannot be a ground for interference.

16. On the facts of the given case, it is not in dispute that except by pleadings, the assessees-firms have accepted the deposit only for business exigencies, there were no materials to show the reasonable cause for such exigencies. That is precisely the reason while the Assessing Officer did not accept the case of the assesees and consequently levied penalty for violation of the provisions of Section 269SS.

17. Coming to the findings of the Commissioner of Income Tax Appeals, we do not find any materials to support the findings as to the reasonable cause except quoting the provisions.

18. Precisely, for the said reason only the Income Tax Tribunal had come to the conclusion that the assessee has not produced any material whatsoever to sustain the plea of reasonable cause either by producing the mterials to show that the depositors have no bank account, and consequently to accept the deposits in cash. The Tribunal came to a correct conclusion that the assessees have also not demonstrated the shortage of cash in the business, which made the assessees to accept the cash. It also observed that the assessees have not shown that there was cash deficiency to meet their day- today business. For the above reasons, the Tribunal had interfered with the order of the Commissioner of Income Tax (Appeals) which ended without any material to support such conclusions.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

19. Learned counsel for the appellant would rely upon the decision of this Court reported in (2006) 280 ITR 129 (Commissioner of Income Tax v Kasi Credit Corporation and another) and contended that the penalty should not have been imposed on the facts of the given case. In fact from the facts of the said judgment, it is seen that it was a case related to an uneducated woman who has no bank accounts and the deposit was accepted in cash and this Court was of the view that the said circumstance may be the reasonable cause for accepting the deposit in cash and has brought the claim of the assessee under Section 273D. However, that is not the case on hand.

20. In this case, admittedly the amount has not been accepted by the depositors and in the absence of any materials whatsoever to show the reasonable cause, as has been shown and explained in the other case, we do not find any infirmity of the Special Tax Appellate Tribunal.

21. Learned counsel for the appellants however submitted that the assesseeas appellants may be permitted to adduce materials before the Assessing Officer to establish the reasonable cause. In our opinion, such a course cannot be adopted in this case. As the appellants had miserably failed even before the Assessing Officer on the very first instance to adduce such documents and having failed to invoke an order from the Income Tax appellate Tribunal, solely on the ground of lack of materials. It is now for the assessees to seek remand for merely production of those documents. Hence, for the above request, we are inclined to reject the same and accordingly the issues were also answered against the assessees and in favour of the Revenue.

22. For the foregoing reasons, we are inclined to reject all these Tax Case (Appeals) and accordingly issues are also answered against the assessees and in favour of the Revenue.

kv/sg

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

To

1. The Asst.Registrar,
   Income Tax Appealate Tribunal,
   IIIrd Floor, Rajaji Bhavan,
   Besant Nagar, Chennai-90.

2. The Commissioner of Income Tax Appeals VI,
   Chennai-34.

3.The Deputy Commissioner of
  Income Tax Circle II,Chennai 600 034.

4.The Joint Commissioner of Income Tax Range-III,
  Chennai-34.

+10 ccs to Mr.N.Muralikumaran, Advocate Sr.Nos.49100,49101,49102,49095, 49491,49490,49096,49097,49099,49098.

+10 ccs to Mr.J.Balachander Advocate Sr.No.49500.

KA(CO)
DCP.23.8

T.C.(A)Nos.552 to 555, 557, 560, 569,784 and 786 of 2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/